

Federal Court of Appeal



Cour d'appel fédérale

Date: 20171011

Docket: A-110-15

Citation: 2017 FCA 205

**CORAM: PELLETIER J.A.
BOIVIN J.A.
GLEASON J.A.**

BETWEEN:

JIM BRASSARD

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on September 12, 2017.

Judgment delivered at Ottawa, Ontario, on October 11, 2017.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

**BOIVIN J.A.
GLEASON J.A.**

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] Mr. Jim Brassard appeals from the decision of the Tax Court of Canada, cited as 2015 TCC 29, dismissing his appeal from the Minister's assessment pursuant to section 160 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the Act), making Mr. Brassard jointly liable for his brother's tax debt in the amount of \$66,264.37. The Minister alleged that Mr. Brassard's brother, Victor Brassard, transferred to Mr. Brassard real property for less than fair market value

at a time when Victor Brassard was a tax debtor. This triggered the application of section 160 of the Act.

[2] At trial, Mr. Brassard, who represented himself, challenged the Minister's assessment of the fair market value of the property as of the date of its transfer to him. He did so by attacking the appraisal prepared by an appraiser employed by the Canada Revenue Agency. The appraiser prepared an appraisal based on records obtained from the British Columbia Assessment Authority, five comparable sales of nearby properties at or near the material time, and a drive-by inspection. The appraiser's opinion was that the property was worth \$175,000 in October 2005, the date at which the transfer between the brothers took place. When the appraiser did her drive-by, she saw two mobile homes on the property and included their value in her opinion as to the value of the property. Subsequent investigation showed that one of the mobile homes did not belong to the owner of the land, Victor Brassard, at the material time so the Minister deducted the value of the trailer (\$54,400) from the appraised value. In the end, the Minister proceeded on the basis that the value of the property as of the date of the transfer, October 2005, was \$120,600.

[3] In calculating the benefit received by Mr. Brassard at the time of the transfer, the Minister assumed that Mr. Brassard paid \$50,000 for the property.

[4] Mr. Brassard attempted to show at trial that he had in fact paid more than \$50,000 for the property. He was able to show that he paid his brother \$27,000 by way of bank drafts. However, he was not able to establish that he discharged a mortgage on the property. Nor was he able to

show the value of the improvements he added to the property while it was in his brother's name. As a result, Mr. Brassard was not able to show that he paid more than \$50,000 for the property.

[5] The result was that, for purposes of section 160, Mr. Brassard acquired from his brother a property worth \$120,600 for less than fair market value at a time when the latter was a tax debtor. The amount of Victor Brassard's tax debt as of the date of the transfer, October 20, 2005, and as of the section 160 assessment, November 17, 2009, were \$49,703.36 and \$66,264.37 respectively. Since the amount of the benefit received by Mr. Brassard exceeded his brother's tax debt, he was assessed the amount of his brother's tax debt as of the date of the assessment.

[6] At the hearing of the appeal, Mr. Brassard, who continues to represent himself, sought to challenge the Minister's determination of the value of the property at the time of the transfer by introducing evidence of sales of comparable properties. Mr. Brassard previously brought a motion pursuant to Rule 351 of the *Federal Courts Rules*, SOR/98-106 for leave to present new evidence on appeal. That motion was dismissed. Mr. Brassard then included that material in his motion record responding to the notice of status review. Mr. Brassard asked to have this material entered as evidence in the appeal. The Court declined to admit the evidence but allowed Mr. Brassard to refer to it, after telling him it could not take it into account

[7] The difficulty with Mr. Brassard's evidence of other sales is that the fair market value of a property at a given point in time is a question which calls for an opinion. Courts do not act upon their own opinion of such questions but rely upon the evidence of those who have the training and experience to be able to offer such an opinion. In this case, the Minister presented

the evidence of a Canada Revenue Agency appraiser who explained how she arrived at her conclusion. Mr. Brassard cross-examined this witness. In the end, the trial judge accepted the appraiser's opinion, as adjusted by the Minister to account for the ownership of the trailer on the property.

[8] The evidence of comparable sales which Mr. Brassard sought to bring to this Court's attention would not permit us to substitute our opinion as to the fair market value of the property for the Tax Court judge's conclusion. We are in no better position than the trial judge to substitute our opinion of fair market value for that of a person with training and experience in this area. Furthermore, once the trial judge has come to a conclusion on a question of fact, such as the fair market value of a property, the Supreme Court of Canada has held that an appellate court cannot substitute its opinion for that of the trial court except where the latter has fallen into palpable and overriding error: see *Housen v. Nikolaisen*, 2002 SCC 33 at paragraph 10, [2002] 2 S.C.R. 235. A palpable error is one which is plainly or easily seen, while an overriding error is one which has a determinative effect on the outcome of the case.

[9] The Court listened to Mr. Brassard attentively for two hours while he pointed out the various issues he had with the Tax Court's reasons, the Minister's appraisal and the conduct of CRA officials. Ultimately, bearing in mind the constraints imposed on us by the standard of review as set out in *Housen v. Nikolaisen*, I find no error in the Tax Court's decision which would justify our intervention.

[10] As a result, I would dismiss the appeal with costs.

"J.D. Denis Pelletier"

J.A.

"I agree

Richard Boivin J.A."

"I agree

Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-110-15
STYLE OF CAUSE: JIM BRASSARD v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: SEPTEMBER 12, 2017

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: BOIVIN J.A.
GLEASON J.A.

DATED: OCTOBER 11, 2017

APPEARANCES:

Jim Brassard FOR THE APPELLANT
Self-represented

Gergely Hegedus FOR THE RESPONDENT

SOLICITORS OF RECORD:

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